



California Regional Water Quality Control Board

San Francisco Bay Region

Alan C. Lloyd, Ph.D.
Agency Secretary

1515 Clay Street, Suite 1400, Oakland, California 94612
(510) 622-2300 • Fax (510) 622-2460
<http://www.waterboards.ca.gov/sanfranciscobay>



Arnold Schwarzenegger
Governor

Date: **JAN 27 2006**

File No. 43S1069 (MS)

Certified Mail No. 70042510000127692240

TWC Storage, LLC

Attn: Jack May (jack.may@msn.com)

420 Maple Street

Redwood City, CA 94063

SUBJECT: Administrative Civil Liability Complaint for property located at
1165 East Arques Avenue, Sunnyvale, Santa Clara County

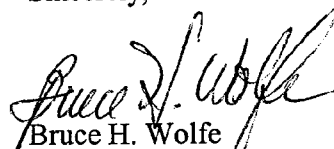
Dear Mr. May:

Attached please find Administrative Civil Liability Complaint No. R2-2006-0002 in the amount of \$40,000 for the discharge of perchloroethylene, a hazardous waste, into waters of the State.

Unless waived, a hearing on this complaint will be held before the Water Board on April 12, 2006 at the Elihu M. Harris State Building, First Floor Auditorium, 1515 Clay Street, Oakland, California. At the hearing, the Water Board will consider whether to affirm, reject, or modify the proposed civil liability, to refer the matter to the Attorney General for recovery of judicial liability, or take other enforcement actions. You can waive your right to a hearing by signing and submitting the attached waiver by March 6, 2006 to the Water Board. The deadline to submit any written evidence concerning this complaint is March 6, 2006.

If you have any questions regarding this letter, please contact Max Shahbazian of my staff at (510) 622-4824 or by email at MS Shahbazian@waterboards.ca.gov.

Sincerely,


Bruce H. Wolfe
Executive Officer

Attachment: Administrative Civil Liability Complaint No. R2-2006-0002
cc with attachment: Mailing List

MAILING LIST
1165 East Arques Avenue

Silicon Valley Law Group
Attn: Jeffrey S. Lawson (jsl@svlg.com)

Clayton Group Services
Attn: John Werfal
(John.Werfal@us.bureauveritas.com)
Attn: Jon Rosso
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Advanced Micro Devices, Inc.
Attn: Julia Bussey
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1 AMD Place
Sunnyvale, CA 94088

Barg Coffin Lewis & Trapp, LLP
Attn: R. Morgan Gilhuly
(rmg@bcltlaw.com)

Geomatrix Consultants, Inc.
Attn: Peter Bennett
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2101 Webster Street, 12th Floor
Oakland, CA 94612

National Semiconductor Corporation
Attn: Richard Banks
(Richard.Banks@NSC.com)

Treadwell & Rollo, Inc.
Attn: Glenn Leong
(gmLeong@treadwellrollo.com)

Knowledge Learning Corporation
Attn: Steven Claussen
(SClaussen@KLcorp.com)
Attn: Kelley Egge [Kegre@Klcorp.com]
Attn: Mandy Cummando
(Mandy.Cummando@KLcorp.com)

E3RA Consulting
Attn: Doug Henry (dhenry@e3ra.com)

Santa Clara Valley Water District
Attn: George Cook
(GCook@valleywater.org)
5750 Almaden Expressway
San Jose, CA 95118-3614

Santa Clara County Dept of Environmental
Health
Attn: Nicole Pullman
(Nicole.Pullman@deh.co.santa-clara.ca.us)
1555 Berger Drive, Suite 300
San Jose, CA 95112-2716

City of Sunnyvale Department of Public
Safety
Attn: Ron Staricha
(RStaricha@ci.sunnyvale.ca.us)
P.O.Box 3707
Sunnyvale, CA 94088-3707

U.S. EPA Region 9
Attn: Penny McDaniel
(mcdaniel.penelope@epa.gov)

Prodigy childcare center parents:
Adam Brand (adamdbbrand@Comcast.net)
Jerry and Tina Martinson
(JMartinson@Arubanetworks.com)
Kecia Barnes (kbar96@yahoo.com)
Lynda Flores (Flores_Lynda@yahoo.com)
Sharon Adam (Sharon_Adam@yahoo.com)
Nancy Wong (wong.nancy@gene.com)
Srinivas Satya (s_satya@yahoo.com)
Joel Adam (joel_adam@yahoo.com)
Kevin Ham (kham@parcor.com)

California Regional Water Quality Control Board
San Francisco Bay Region

COMPLAINT NO. R2-2006-0002
FOR
ADMINISTRATIVE CIVIL LIABILITY

IN THE MATTER OF TWC STORAGE, LLC.
FOR VIOLATIONS OF CALIFORNIA WATER CODE
SECTIONS 13264, 13265(c), AND 13350(b)(1)
AT 1165 EAST ARQUES AVENUE,
SUNNYVALE, SANTA CLARA COUNTY

The Executive Officer of the California Regional Water Quality Control Board, San Francisco Bay Region (hereinafter the "Water Board"), hereby gives notice that:

1. TWC Storage, LLC (hereinafter "Discharger"), has violated provisions of law for which the Water Board may impose civil liability pursuant to California Water Code ("CWC") Sections 13265(c) and (d)(1), 13323 and 13350(e).
2. The Discharger violated CWC Sections 13264 and 13350(b)(1) by discharging perchloroethylene (PCE), a hazardous waste and a hazardous substance, into waters of the State.
3. Unless waived, a hearing on this complaint will be held before the Water Board on April 12, 2006 at the Elihu M. Harris State Building, First Floor Auditorium, 1515 Clay Street, Oakland, California. The Discharger or its representative will have an opportunity to be heard and contest the allegations in this complaint and the imposition of the civil liability. An agenda for the meeting will be mailed to the Discharger not less than 10 days before the hearing date. The deadline to submit any written evidence concerning this complaint is March 6, 2006. The Water Board will not consider any written evidence not so submitted.
4. At the hearing, the Water Board will consider whether to affirm, reject, or modify the proposed civil liability, to refer the matter to the Attorney General for recovery of judicial liability, or take other enforcement actions.

ALLEGATIONS

5. This complaint is based on the following facts:

- a. 1165 East Arques Avenue in Sunnyvale is a former Advanced Micro Devices (AMD) site. The site is a federal Superfund site overseen by the Water Board. AMD sold the property to the Discharger in May 2004. On July 15, 2005, the Discharger was conducting building demolition activities at the site as part of a redevelopment project. During demolition activities on July 15, 2005, the Discharger damaged an electrical transformer, initiating a release of PCE. Electrical transformers are known to contain dielectric and cooling liquids such as polychlorinated biphenyls (PCBs) and PCE. It is a

common, routine and accepted practice to drain these liquids out of the transformers prior to dismantling or demolition. The damaged transformer was left at the site until July 19, 2005, before the Discharger took appropriate spill cleanup steps. During these four days, 250 gallons of PCE leaked out of the transformer and soaked into the soil, impacting the underlying shallow groundwater aquifer. The Discharger has advanced 56 soil borings in the spill area and collected and analyzed over two hundred soil samples to define the extent of soil and groundwater contamination in both unsaturated and saturated zones. PCE concentrations in soil samples ranged from non-detect to 12,000 mg/kg. A groundwater sample collected from a nearby monitoring well (MM17A) on October 13, 2005 (three months after the discharge), contained 12,000 ug/l of PCE. A groundwater sample collected from the same well on October 12, 2000, contained 24 ug/l of PCE. PCE in this well has ranged between 7 and 69 ug/l in the past 15 sampling events conducted between January 4, 1992 and October 12, 2000. In addition, no significant changes in the concentration of PCE have been observed in four other nearby groundwater monitoring wells in the area during the October 13, 2005 sampling event. The California drinking water maximum contaminant level for PCE is 5 µg/l.

- b. CWC Section 13264 prohibits a person from discharging waste prior to filing a report of waste discharge (ROWD) and without waste discharge requirements (WDRs). Discharger discharged PCE without filing a ROWD or obtaining WDRs.
- c. Under CWC Section 13265(c), any person discharging hazardous waste as defined by Health and Safety Code Section 25117, in violation of CWC Section 13264, is guilty of a misdemeanor and may be civilly liable in accordance with CWC Section 13265(d). PCE is a hazardous waste under Section 25117 of the Health and Safety Code and the regulations promulgated hereunder. Liability under CWC Section 13265(c) cannot be imposed if a discharger is not negligent *and* immediately files a ROWD, or if the violation was insubstantial. Discharger was negligent in its discharge of PCE because it failed to exercise ordinary care in the handling of hazardous waste stored on its property. Discharger did not immediately file a ROWD subsequent to the discharge. Additionally, discharging 250 gallons of a hazardous waste such as PCE is not an insubstantial violation.
- d. The Discharger violated CWC Section 13350(b)(1) because it discharged PCE, a hazardous substance as defined in CWC Section 13050, into waters of the State. Persons violating Section 13350(b)(1) are strictly liable.

PROPOSED CIVIL LIABILITY

6. For violating CWC Section 13264, the Water Board may administratively impose civil liability pursuant to CWC Sections 13265(c) and (d)(1) and 13323 in an amount that cannot exceed five thousand dollars (\$5,000) for each day in which the violation occurs.

For violating CWC Section 13350(b)(1), the Water Board may administratively impose civil liability pursuant to CWC Sections 13350(e) and 13323 either on a daily basis or a per gallon basis, but not both. Under CWC Section 13350(e), the civil liability on a daily basis may not

exceed five thousand dollars (\$5,000) for each day in which a violation occurs. The civil liability on a per gallon basis may not exceed \$10 for each gallon of waste discharged.

7. In determining the amount of civil liability to be assessed to the Discharger, the Water Board must take into consideration the factors described in CWC Section 13327. These factors and considerations are as follows:

a. Nature, Circumstances, Extent and Gravity of the Violation:

The PCE from the spill has contaminated groundwater beneath the site. The potential beneficial uses of groundwater underlying and adjacent to the site include: municipal and domestic supply, industrial service and process supply, and agricultural supply. The shallow aquifer in this area overlies a major aquifer, which is the source of drinking water for thousands of residents in Santa Clara County. The contaminants from the shallow aquifer threaten to infiltrate down into the deeper aquifer and contaminate groundwater in the currently used deeper aquifer.

In addition, vapors from PCE have migrated through the soil column and pose a potential health hazard to occupants of buildings located at or near the site. On September 10, 2005, two months after the PCE release, elevated levels of PCE in soil gas were measured in shallow soil next to a childcare center at 1155 East Arques Avenue, adjacent to the site. These concentrations exceed soil gas screening levels for vapor intrusion (Screening for Environmental Concerns at Sites with Contaminated Soil and Groundwater, Water Board, February 2005). These screening levels indicate soil gas concentrations that are expected to cause exceedance of indoor air screening levels following vapor intrusion. Indoor air sampling at the childcare center on October 23 and December 17, 2005, found detectable concentrations of PCE at or slightly above applicable indoor air screening levels. These levels may be partially attributable to other sources of PCE (e.g., outdoor air, dry cleaned clothing).

b. Susceptibility of the Discharge to Cleanup:

PCE discharged to soil and groundwater is susceptible to cleanup through numerous methods including soil excavation, soil vapor and groundwater extraction, chemical oxidation and bioremediation.

c. Degree of Toxicity of the Discharge:

PCE is a highly toxic substance. The California drinking water maximum contaminant level for PCE is 5 µg/l. A groundwater sample collected from near the PCE spill on October 13, 2005 (three months after the discharge), contained 12,000 µg/l of PCE. PCE is a hazardous substance as defined in CWC Section 13050(p)(1) and a hazardous waste and a toxic waste as defined in California Health and Safety Code Sections 25117 and 25140 (also see California Code of Regulations Title 22, Division 4.5, Chapter 11).

d. Ability to Pay and Ability to Continue Business:

The Discharger owns and operates several self-storage facilities in California. Based on the cash flow from these businesses, the Discharger should be able to pay the proposed civil liability with no effect on its ability to stay in business.

e. Voluntary Cleanup Efforts Undertaken:

Spill cleanup efforts started four days after the initial discharge. Soil cleanup efforts started on July 30, 2005 and ended on October 11, 2005. During this time, the Discharger excavated and disposed of approximately 2,000 cubic yards of PCE-impacted soil. In addition, the Discharger has proposed to cleanup the PCE-impacted groundwater and soil at the site and the vicinity to background levels that existed prior to the PCE discharge.

f. Prior history of Violations:

The Water Board is not aware of any prior violations by the Discharger.

g. Degree of Culpability:

The PCE discharge resulted from an operator error that was completely preventable. The Discharger damaged a transformer that was clearly marked "Perclene" in stenciled letters. Perclene is a commercial name for PCE. Electrical transformers are known to contain dielectric and cooling liquids such as polychlorinated biphenyls (PCBs) and PCE. It is a common, routine and accepted practice to drain these liquids out of the transformers prior to dismantling or demolition. The Discharger was negligent because it had a duty of ordinary care during its demolition of the electrical transformer to prevent a discharge of the contents of the transformer. The Discharger breached its duty of ordinary care by not containing and properly managing the contents of the transformer during demolition activities.

h. Economic Savings:

There are no net economic savings, as the avoided costs of properly removing, hauling, and disposing of the PCE from the transformer are less than the costs incurred in its cleanup.

8. Based on the above factors, the Executive Officer proposes civil liability should be imposed on the Discharger in the amount of forty thousand dollars (\$40,000) for the violations cited above, which is due as provided below. The \$40,000 is based on four days of violating CWC Section 13264 (at a civil liability rate of \$5,000 per day of violation) and four days of violating CWC Section 13350(b)(1) (at a civil liability rate of \$5,000 per day of violation).

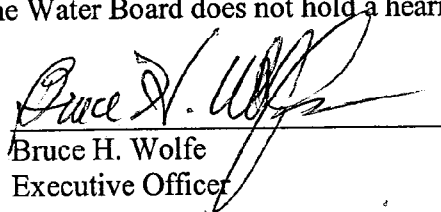
9. This action is an enforcement action and is, therefore, exempt from the California Environmental Quality Act, pursuant to Title 14, California Code of Regulations, Section

15321.

10. The Discharger can waive its right to a hearing by signing and submitting the attached waiver by March 6, 2006 to the Water Board. If waived, this matter will be included on the agenda of a Board meeting but there will be no hearing on the matter, unless 1) Water Board staff receives significant public comment during the comment period, or 2) the Water Board determines that it will hold a hearing because it finds that new and significant information has been presented at the meeting that could not have been submitted during the public comment period. If the Discharger waives its right to a hearing but the Water Board holds a hearing under either of those circumstances, the Discharger will have the right to testify at the hearing notwithstanding the waiver. By waiving, the Discharger agrees to pay the liability within 30 days after the Water Board meeting provided that the Water Board does not hold a hearing.

JAN 27 2006

Date



Bruce H. Wolfe
Executive Officer

Attachment: Waiver of Hearing form

WAIVER OF HEARING

☐ By checking here, I agree to waive my right to a hearing before the Water Board with regard to the violations alleged in Complaint No. R2-2006-0002 and to remit the full civil liability payment to the State Water Resources Control Board, c/o San Francisco Regional Water Quality Control Board, 1515 Clay Street, Suite 1400, Oakland, CA 94612, within 30 days after the Water Board meeting on which the Complaint is agendized, provided that the Water Board does not hold a hearing on the Complaint. I understand that I am giving up my right to be heard, and to argue against the allegations made by the Executive Officer in the Complaint, and against the imposition of or the amount of the civil liability.

Name (Print)

Signature

Date

Title/Organization